

IN THE MATTER OF THE APPLICATION FOR A WRIT OF HABEAS CORPUS, BERNABE BUSCAYNO, JOSE MA. SISON AND JULIET SISON, PETITIONERS, VS. MILITARY COMMISSIONS NOS. 1, 2, 6 AND 25, GENER...

G.R. No. L-58284. November 19, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

Bernabe Buscayno alias Commander Dante and Jose Ma. Sison alias Amado Guerrero, alleged subversives classified as "PKP/HMB/PPP/MAMAO and Traditional Armed Group personalities", were wanted by the authorities since 1971.

In Department Order No. 610 Undersecretary of National Defense Efren I. Plana fixed P150,000 and P50,000 as the prizes to be paid to any person who kills, captures or causes the killing, capture or surrender of Buscayno and Sison, respectively, or who furnishes information directly leading to and which is the proximate result of their killing or capture. (p. 96, Rollo of L-47185.)

Buscayno and Sison were included in the so-called "National Target List" of active participants in the conspiracy to seize political and state power and to take over the government by force whose arrest was ordered under General Order No. 2 dated September 22, 1972. The list was prepared by Colonel Hamilton B. Di-maya. (p. 95, Rollo of L-47185.)

Buscayno's cases. - Even before Buscayno's arrest, he and Benigno S. Aquino, Jr. (arrested on September 23, 1972) were charged before Military Commission No. 2 in an amended charge sheet dated August 14, 1973 with subversion or violation of the Anti-Subversion Law, Republic Act No. 1700.

It was alleged that as ranking leaders of the Communist Party of the Philippines and its military arms, the Hukbong Mapagpalaya ng Bayan and the New People's Army, constituting an organized conspiracy to overthrow the government by force or placing it under the control of an alien power, they committed the following acts (Criminal Case No. MC-2-23, pp. 71-75, Rollo of L-47185):

1. In April, 1969, Aquino at 25 Times Street, Quezon City gave P15,000 to the said organizations for the purpose of staging an NPA-sponsored demonstration in Manila which was in fact carried out in Congress, Malacañang and the American Embassy on April 19, 1969 to achieve the objectives of the said organizations.
2. Aquino in 1967 gave to Buscayno in Concepcion, Tarlac a .45 caliber pistol with magazine and ammunition to be used against the government.
3. Aquino in August, 1967 in the house of Leonida Arceo located at Barrio San Francisco, Tarlac, Tarlac gave to Buscayno two .45 caliber pistols to be used against the government.
4. Aquino in October, 1969 in Barrio Alto, Hacienda Luisita, San Miguel, Tarlac, Tarlac, gave to Commanders

Arthur Garcia and Jose Buscayno two armored vests and a pair of walkie-talkies to be used against the government.

5. Aquino on November 1 and 2, 1965 in San Miguel, Tarlac, Tarlac, gave to Commander Alibasbas through Commander Danilo several firearms and ammunition which were taken from the house of Manuel Rodriguez and which were to be used against the government and in fact the said firearms were recovered from Commander Alibasbas and his group when they were killed in Barrio Almendras, Con-cepcion, Tarlac.

6. Aquino in 1970 and 1971 at 25 Times Street, Quezon City provided shelter and medical treatment for Roberto Santos alias Commander Felman, Benjamin Sanguyo alias Commander Pusa and eight other sick or wounded officers or members of the HMB and NPA.

Aquino, Buscayno, Peter Ilocano and Puriok, as conspirators, were also charged with murder before Military Commission No. 2 in a charge sheet dated August 7, 1973. It was alleged that during the last days of November to December 2, 1967 they took Cecilio Sumat, a barrio captain of Motrico, La Paz, Tarlac, from his house and killed him in Barrio San Miguel, Tarlac, Tarlac (Criminal Case No. MC-2-22, pp. 76-77, Rollo of L-47185).

In Criminal Case No. MC-1-92, Buscayno, with ninety-one other persons including Sison and his wife, Juliet de Lima, Saturnino Ocampo and Mila Astorga-Garcia, were charged with rebellion before Military Commission No. 1 in a charge sheet dated March 18, 1977.

It was alleged that on or about February 4, 1972 and for sometime prior or subsequent thereto the ninety-two accused as officers and leaders of the Communist Party of the Philippines and its military arm, the New People's Army, and as conspirators rose publicly and took up arms against the government in Navotas, Rizal and elsewhere in the Philippines for the purpose of removing from the allegiance to said government or its laws the territory of the Philippines or any part thereof or of its armed forces by organizing the Karagatan Fishing Corporation and operating the M/V Karagatan, a fishing vessel, to procure firearms and ammunition for the CPP and NPA as in fact war materials and armaments were landed at Digoyo Point, Palanan, Isabela on July 2, 1972 from Communist China and were used against the army.

The second specification in Criminal Case No. MC-1-92 is that Buscayno, Sison and others during the period from August, 1973 to February, 1974 committed rebellion in Manila, Baguio, La Union, Pangasinan, Bulacan and elsewhere in the Philippines by acquiring, purchasing and operating vessels, motor vehicles, beachhouses, lots and other real and personal properties for use in distributing firearms and ammunition for the CPP and NPA to be utilized in resisting the army and overthrowing the government. (pp. 78-91, Rollo of L-47185.)

The said case was refiled in Special Military Commission No. 1 as Criminal Case No. SMC-1-1 with an amended charge sheet dated November 8, 1977 (pp. 189-205, Rollo of G.R. No. 58284).

Buscayno was arrested on August 26, 1976 in Barrio Sto. Rosario, Mexico, Pampanga by operatives of the armed forces. He was detained in the Constabulary Security Unit at Camp Crame. When the trial counsel informed Buscayno that his presence at the hearing on September 15, 1976 before Military Commission No. 2 was necessary, Buscayno in a letter dated September 7, 1976 addressed to the President of the Commission declared that he had no intention of appearing before the tribunal; that he did not need a lawyer; that he would not contest the tribunal's jurisdiction and that any reference by the prosecution witnesses to Buscayno alias Commander Dante would be to him and to no other person.

At Buscayno's arraignment in the subversion and murder cases, he waived his right to be present and to have counsel. He said that he was not challenging any member of the tribunal. He just wanted to have a record of the trial. He pleaded not guilty. After the prosecution had finished the presentation of its evidence, Buscayno was

asked whether he wanted to present evidence. He answered in writing that he did not want to present evidence.

On July 18, 1977, Juan T. David entered his appearance as counsel for Buscayno in Criminal Case No. MC-2-23 for subversion. On October 25, 1977, lawyer David filed in this Court in behalf of Buscayno a petition for habeas corpus and prohibition.

As no restraining order was issued, the Commission continued its proceeding against Buscayno and Aquino. On November 25, 1977, after Buscayno failed to present any evidence in spite of having been given another chance to do so, his case was deemed submitted for decision. After deliberation, the Commission found all the accused guilty as charged and imposed death by firing squad. The complete records of the cases were transmitted to the Secretary of National Defense.

However, four days later or on November 29, the President of the Philippines directed the Commission to reopen the trial and give Aquino and Buscayno another chance to present their evidence. According to the petitioners, on December 15, 1977, this Court enjoined the Commission from rehearing the two cases (p. 20, Petition) but no restraining order was actually issued.

This Court in its decision dated January 15, 1981 dismissed Buscayno's petition (L-47185, 102 SCRA 7). We reiterated the rule that a military tribunal has jurisdiction to try civilians and that the proceeding in a military commission is not violative of procedural due process and would not be vitiated by partiality. (Aquino vs. Ponce Enrile, L-37364, May 9, 1975, 63 SCRA 546; Gamaua vs. Espino, L-36188--37586, February 29, 1980, 96 SCRA 402.)*

On March 27, 1981, Military Commission No. 2 convened to hear Buscayno's evidence in the subversion and murder cases. His counsel asked for postponement on the ground that he requested the President of the Philippines to transfer the two cases to the civil courts and that he should be furnished with the transcripts of the hearings held on November 25 and December 5, 1977. The truth is that he was furnished with those transcripts on January 8, 1978.

The postponement was granted. The hearing was reset for April 23. At the hearing on that date, Buscayno's counsel again asked for postponement because the President had not yet acted upon his request for the transfer of his cases to the civil courts. He challenged the competency of the president of the Commission on the ground of lack of adequate knowledge of the two cases. The challenge was rejected. Buscayno did not present any evidence. The Commission considered the cases re-submitted for decision.

On May 4, 1981, the Commission denied Buscayno's motion for the reconsideration of the ruling that his case was already submitted for decision. It reaffirmed its 1977 decision imposing on Buscayno the penalty of death by firing squad.

Cases against Sison spouses. - They were arrested on November 10, 1977 by virtue of arrest, search and seizure orders issued by the Secretary of National Defense.

As already stated in connection with the Buscayno case, the Sison spouses and ninety-one other persons including Buscayno and Victor Corpus were charged with rebellion on two counts before Special Military Commission No. 1 as shown in the amended charge sheet dated November 8, 1977.

Even before her arrest, Juliet Sison, with fifty-five other persons including Victor Corpus, was charged with subversion before Military Commission No. 6 (Case No. 55), as shown in the charge sheet dated November 16, 1972.

It was alleged therein that the fifty-six accused, in 1968 and for sometime prior and subsequent thereto, became

and have remained officers and ranking leaders of the CPP and the NPA, the CPP's military arm, and the CPP's front organizations such as the Kabataang Makabayan (KM), Sama-hang Demokratikong Kabataan (SDK), Malayang Samahan ng Magsasaka (MASAKA), Student Alliance for National Democracy (STAND), Movement for Democratic Philippines (MDP) and Malayang Kilusan ng Bagong Kababaihan (MAKIBAKA), whose objective is the overthrow of the government for the purpose of establishing a totalitarian regime and placing the government under the control and domination of an alien power.

It was specified that the accused engaged in extensive indoctrination, agitation and promotion of rallies (ten instances) and in propagandas, speeches, teach-ins, messages, lectures, all intended to promote the communist pattern of subversion (eleven instances).

The same charge sheet indicated that the accused rose publicly and took up arms against the government, engaging in war against the forces of the government and committing serious violence (eight instances).

Juliet Sison was pinpointed as a ranking leader of the Kabataang Makabayan operating in the Bicol region, helping her husband Jose as KM chairman and editing the periodical *Ang Bayan* in Isabela in 1971-72 (Annex 3 of Return).

Jose Ma. Sison, with Juanito Canlas, Cesario Diego, Saturnino Ocampo, Antonio Liao, Mila Roque, Alfredo Granada, Ramon Isberto, Ester Ceniza and Evelyn Sarmiento were charged with subversion under Presidential Decree No. 885 (which superseded Republic Act No. 1700) before Military Commission No. 25 in Case No. 113 as shown in the charge sheet dated October 3, 1978.

It was alleged that the ten accused, in or about 1968 and for sometime prior and subsequent thereto and continuously thereafter, in Capas, Tarlac and elsewhere in the Philippines, wilfully organized and joined as officers and ranking members of the CPP and the NPA for the purpose of overthrowing the government through armed revolution, violence and subversion with the covert assistance and support of a foreign power in order to establish therein a totalitarian regime subject to alien control and domination (Annex 4 of Return).

In the rebellion case, Case No. SMC-1-1, the Sison spouses and the Buscayno spouses assailed the jurisdiction of the military tribunal to try civilians like them.

On January 3, 1979, the Sison spouses, together with the Buscayno spouses, Peter Mutuc, Edgar Pilapil, Eduardo Lingat, Joaquin Rivera, Leonila Lumbang and Juanito Canlas, filed in this Court a petition for habeas corpus, prohibition and mandamus (L-49579).

That petition, like Buscayno's petition in L-47185, was dismissed in this Court's decision dated January 15, 1981 (102 SCRA 33).

The instant case. - On October 2, 1981. Buscayno and the Sison spouses filed the instant omnibus, catchall petition for habeas corpus, prohibition and mandamus couched in repetitious, involuted and obfuscatory verbiage.

They prayed that the decision of Military Commission No. 2 dated May 4, 1981, convicting Buscayno of subversion and murder and sentencing him to death by firing squad, be declared void because he was denied his constitutional right to present evidence and that he be released from detention.

They also prayed that the charges of rebellion and subversion be dismissed for being in contravention of the rule on double jeopardy, that Military Commissions Nos. 1, 6 and 25 be enjoined from proceeding with the trial of the petitioners and that the petitioners be released. They also prayed that they be granted bail.

The petitioners also asked for the issuance of a temporary restraining order, enjoining the three Commissions from trying the petitioners, enjoining Military Commission No. 1 from continuing with the perpetuation of

testimonies and from requiring the petitioners to attend the perpetuation proceedings and enjoining the Review Board-AFP from re-viewing the decision in the subversion and murder cases.

Habeas corpus and petitioners' release on bail. - This is Buscayno's third petition for habeas corpus and the second petition of the Sison spouses. The ultimate issue is whether they are legally detained. We find that they have not been illegally deprived of their liberty and that there is no justification to order their release.

Proclamation No. 2045 dated January 17, 1981, which terminated martial law, sanctions the continued confinement of the petitioners. It provides (77 OG 441):

"x x x Now, therefore, I, Ferdinand E. Marcos, President/Prime Minister of the Philippines, x x x proclaim the termination of the state of martial law throughout the Philippines;

"Provided, that the call to the Armed Forces of the Philippines to prevent or suppress lawless violence, insurrection, rebellion and subversion shall continue to be in force and effect; and

"Provided, that in the two autonomous regions in Mindanao, upon the request of the residents therein, the suspension of the privilege of the writ of habeas corpus shall continue; and in all other places the suspension of the privilege of the writ shall also continue with respect to persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith;

"General Order No. 8 is also hereby revoked and the military tribunals created pursuant thereto are hereby dissolved upon final determination of cases pending therein which may not be transferred to the civil courts without irreparable prejudice to the state in view of the rules on double jeopardy, or other circumstances which render further prosecution of the cases difficult, if not impossible;"

Proclamation No. 2045 explicitly provides that persons, like petitioners who are under detention for rebellion and the capital offense of subversion, cannot enjoy the privilege of the writ of habeas corpus. Because the privilege of the writ of habeas corpus is suspended as to them, they are not entitled to bail (*Lansang vs. Garcia*, L-33964, December 11, 1971 and eight other cases, 42 SCRA 448).

Review of rulings of the military commission.- Ordinarily, this Court cannot review the rulings and proceedings of the military commission. The National Security Code, Presidential Decree No. 1498, which was issued on June 11, 1978 (74 OG 11066), provides in its sections 86(f) and 87(e) that what this Court can review are the decisions of the Court of Military Appeals in cases appealed to it from the military commission.

Generally, this Court does not exercise over military commissions the supervisory jurisdiction which it possesses over civil trial courts whose interlocutory rulings and decisions may be reviewed by this Court. (See *Kuroda vs. Jalandoni*, 83 Phil. 171; *Martelino vs. Alejandro*, L-30894, March 25, 1970, 32 SCRA 106).

So, the issue as to whether Buscayno was denied his constitutional right to present evidence should first be passed upon by the reviewing military authority and not by this Court. The propriety of the perpetuation proceedings in the rebellion case and the conduct of the trial in the Commission cannot at this stage be passed upon by this Court.

We have definitively ruled that the petitioners can be tried by the military commissions and that their cases are within the jurisdiction and competence of military tribunals.

Nevertheless, two legal issues regarding double jeopardy and the alleged repeal of the Anti-Subversion Law may be re-solved in the interest of justice, to dissipate any uncertainty and for the guidance of the parties.

Alleged repeal of the Anti-Subversion Law. - Juliet de Lima-Sison contends that her criminal liability for sub-version was extinguished when Presidential Decree No. 885 (which took effect on May 11, 1976, 72 OG 3826) repealed Republic Act No. 1700. This contention is bereft of merit.

That decree, which is the Revised Anti-Subversion Law, in repealing or superseding Republic Act No. 1700, expressly provides in its section 7 that "acts committed in violation" of the former law before the effectivity of the said decree "shall be prosecuted and punished in accordance with the provisions of the former Act" and that nothing in the said decree "shall prevent prosecution of cases pending for violation of" Republic Act No. 1700. That saving or transitory clause is reenacted in section 14(i) of the National Security Code.

It is similar to article 366 of the Revised Penal Code which provides that felonies and misdemeanors committed prior to the effectivity of the Revised Penal Code shall be punished in accordance with the old Penal Code and the laws in force at the time of their commission.

The fact that Presidential Decree No. 885 does not mention the CPP does not mean that that party is no longer regarded as a subversive organization. The purpose of the party is the decisive factor in determining whether it is a subversive organization.

The issue of double jeopardy. - The petitioners invoke their constitutional right not to be put twice in jeopardy of punishment for the same offense. As may be gleaned from section 9, Rule 117 of the Rules of Court, "same offense" means the offense charged, or an attempt to commit it or a frustrated stage thereof, or "any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information".

For an accused to be in jeopardy, it is necessary (1) that a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction is filed against him; (2) that the charge is filed in a court of competent jurisdiction and (3) that after he had pleaded to the charge, he was convicted or acquitted or the case against him was dismissed or otherwise terminated without his express consent (People vs. Pilpa, L-30250 September 22, 1977, 79 SCRA 81).

To be in jeopardy, the case against the accused must be terminated by means of a final conviction, acquittal or dismissal without his express consent. If the case is not yet terminated, then jeopardy does not set in. After the accused has been put in jeopardy, the filing against him of another charge for the same offense or for an attempt or frustrated stage thereof or for any offense which necessarily includes or is included in the offense originally charged places him in double jeopardy.

That is forbidden by section 22, Article IV of the Constitution or by the rule against double jeopardy: *nemo bis punitur pro eodem delicto* (no one is twice punished for the same offense) or *non bis in idem* which is analogous to *res judicata* in civil cases.

As stated earlier, Buscayno was charged with subversion together with Aquino in a 1973 charge sheet. Jose Ma. Sison was charged with subversion in a 1978 charge sheet. His wife, Juliet de Lima, was charged with subversion in a 1972 charge sheet. The three petitioners were all charged with rebellion in an amended charge sheet dated November 8, 1977. Only the subversion case against Buscayno was decided but the decision is still subject to review.

Because no case against the petitioners has been terminated, it is at once evident that they cannot invoke the rule on double jeopardy. The petitioners have not yet been placed in jeopardy.

In *Bulaong vs. People*, L-19344, July 27, 1966, 17 SCRA 746, Agaton Bulaong was charged with rebellion in the Laguna Court of First Instance and later with subversion in the Manila Court of First Instance in connection with

his activities as an officer of the CPP and HMB. He was convicted of rebellion by the Laguna court. The Court of Appeals affirmed the judgment of conviction. He appealed to this Court. The subversion case was still pending in the Manila court.

In this Court, he contended that because rebellion is an offense cognate with subversion and that the two informations contain the same facts, he could not be tried for rebellion and subversion without being placed twice in jeopardy for the same acts.

It was held that the defense of double jeopardy should be interposed by Bulaong in the subversion case. He could not plead double jeopardy in the rebellion case because the subversion case had not yet been terminated. (See *Silvestre vs. Military Commission No. 21*, L-46366, March 8, 1978, 82 SCRA 10; *Jimenez vs. Military Commission No. 34*, G.R. No. 54577, January 15, 1981, 102 SCRA 39).

Petitioners contend that rebellion is an element of the crime of subversion. That contention is not correct because subversion does not necessarily include rebellion. Subversion, like treason, is a crime against national security. Rebellion is a crime against public order.

Republic Act No. 1700 (quoted in full in *People vs. Ferrer*, L-32613-14, December 27, 1972, 48 SCRA 382), which took effect on June 20, 1957 and which outlaws the Communist Party and similar associations because their existence and activities constitute a clear, present and grave danger to national security, punishes the following acts:

1. By arresto mayor, anyone who knowingly, wilfully and by overt acts affiliates himself with, becomes or remains a member of the Communist Party or its successor or any subversive association as defined in the law. Prison correccional shall be imposed for a second conviction. Prison mayor shall be imposed for subsequent convictions.
2. By prison mayor to death, being an officer or a ranking leader of the Communist Party or of any subversive association as defined in the law.
3. By prison mayor to death, any member of the Communist Party or similar subversive association who takes up arms against the government.
4. By prison correccional to prison mayor, one who conspires with any other person to overthrow the Government of the Republic of the Philippines or the government of any of its political subdivisions by force, violence, deceit, subversion or other illegal means for the purpose of placing such Government or political subdivision under the control and domination of any alien power.
5. By prison correctional, any person who knowingly furnishes false evidence in any action brought under the Anti-Subversion Law.

As already noted, Republic Act No. 1700 was superseded by Presidential Decree No. 885 which reads as follows:

PRESIDENTIAL DECREE NO. 885

OUTLAWING SUBVERSIVE ORGANIZATIONS, PENALIZING MEMBERSHIP THEREIN AND FOR OTHER PURPOSES

Whereas, there are certain associations or organizations in the Republic of the Philippines, not covered by Republic Act No. 1700, which are seeking to overthrow the Government of the Republic of the Philippines or to dismember a portion thereof; and

Whereas, in order to protect the Government of the Republic of the Philippines and the people, it has become necessary to revise Republic Act No. 1700 to broaden its coverage;

Now, therefore, I, Ferdinand E. Marcos, President of the Philippines by virtue of the powers in me vested by the Constitution, do hereby decree as follows:

Section 1. Short Title- This decree shall be known as the Revised Anti-Subversion Law.

Sec. 2. Subversive Associations and Organizations - Any association, organization, political party, or group of persons organized for the purpose of overthrowing the Government of the Republic of the Philippines or for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippines or any part thereof, with the open or covert assistance or support of a foreign power or the open or covert support from a foreign source of any association, group or person, whether public or private, by force, violence, terrorism, arson, assassination, deceit or other illegal means shall be considered and is hereby declared a sub-versive organization. (As amended by Batas Pambansa Blg. 31, effective on June 6, 1979 and P.D. No. 1736, Sept. 12, 1980.)

Sec. 3. Penalties - (a) Members. - Whoever knowingly, wilfully and by overt act affiliates with, becomes or remains a member of a subversive association or organization as defined in Section 2 hereof shall be punished by arresto mayor and shall be disqualified permanently from holding any public office, appointive or elective, and from exercising the right to vote; in case of a second conviction, the principal penalty shall be prison correccional; and in all subsequent convictions the penalty of prison mayor shall be imposed.

The following acts shall constitute prima facie evidence of membership in any subversive association:

- (1) Allowing himself to be listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;
- (2) Subjecting himself to the discipline of such association or organization in any form whatsoever;
- (3) Giving financial contribution to such association or organization in dues, assessments, loans, or in any other forms;
- (4) Executing orders, plans or directives of any kind of such association or organization;
- (5) Acting as an agent, courier, messenger, correspondent, organizer, or in any other capacity, on behalf of such association or organization;
- (6) Conferring with officers or other members of such association or organization in furtherance of any plan or enterprise thereof;
- (7) Transmitting orders, directives, or plans of such association or organization orally or in writing or any other means of communication such as by signal, semaphore, sign or code;
- (8) Preparing documents, pamphlets, leaflets, books, or any other type of publication to promote the objectives and purposes of such association or organization;
- (9) Mailing, shipping, circulating, distributing, or delivering to other persons any material or propaganda of any kind on behalf of such association or organization;
- (10) Advising, counselling, or in other way giving instruction, information, suggestions, or recommendations to officers or members or to any other person to further the objectives of such association or organization;
- (11) Participating in any way in the activities, planning action, objectives, or purposes of such association or organization.

(b) Officers or Ranking Leaders. - If such member is an officer or a ranking leader of any subversive association or organization as defined in Section 2 hereof, or if such member takes up arms against the Government, he shall be punished by prison mayor to death with all the accessory penalties provided therefor in the Revised Penal Code.

(c) Deportation. - Any alien convicted under this decree shall be deported immediately after he shall have served the sentence imposed upon him.

Sec. 4. False Testimony. - Any person who knowingly furnishes false evidence in any action brought under this decree shall be punished by prison correctional.

Sec. 5. Sufficiency of Evidence. - Except as provided in Section 7 hereof, the two-witness rule heretofore provided in Republic Act Numbered Seventeen hundred is hereby obrogated and the accused may be convicted on the testimony of one witness if sufficient under the rules of evidence, or on his confession given in open court.

Sec. 6. No Restriction of Thought. - Nothing in this decree shall be interpreted as a restriction on freedom of thought, of assembly and of association for purposes not contrary to law as guaranteed by the Constitution.

Sec. 7. Repealing Clause. - This decree supersedes Republic Act Numbered Seventeen Hundred, but acts committed in violation thereof and before the effectivity of this decree, shall be prosecuted and punished in accordance with the provisions of the former Act. Nothing in this decree shall prevent prosecution of cases pending for violation of Republic Act Numbered Seventeen Hundred.

Sec. 8. Sequestration of Property. - The sequestration of the property of any person, natural or artificial, engaged in subversive activities against the Government and its duly constituted authorities, is hereby authorized, in accordance with implementing rules and regulations as may be issued by the Secretary of National Defense.

As used herein, the terms "sequester" and "sequestration" shall mean the seizure of private property or assets in the hands of any person or entity in order to prevent the utilization, transfer or conveyance of the same for purposes inimical to national security, or when necessary to protect the interest of the Government or any of its instrumentalities. It shall include the taking over and assumption of the management, control and operation of the private property or assets seized.

Sec. 9. Effectivity. - This decree shall take effect thirty days after its publication in the Official Gazette.

Done in the City of Manila, this 3rd day of February, in the year of Our Lord, nineteen hundred and seventy-six.

Presidential Decree No. 885 is incorporated in section 14 of the National Security Code.

On the other hand, rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, Philippine territory or any part thereof, or any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

Rebellion is distinct from participation or membership in an organization committed to overthrow the duly constituted government (*People vs. Hernandez*, 120 Phil. 191, 220).

The petitioners were accused of rebellion for having allegedly undertaken a public uprising to overthrow the government. In contrast, they were accused of subversion for being allegedly officers and ranking members of the Communist Party and similar subversive groups. The alleged overt acts of resisting the armed forces were only incidental to the main charge of being leaders of subversive or revolutionary organizations collaborating with an

alien power to make the country a satellite thereof, like Cuba, North Korea and North Vietnam in relation to Soviet Russia.

The issue on double jeopardy raised by the petitioners was resolved by this Court in *People vs. Liwanag* alias Linda Bie, L-27683, October 19, 1976, 73 SCRA 473. In that case, Silvestre Liwanag was charged in 1960 with subversion for being an officer and ranking member of the CPP and HMB.

He filed a motion to quash the information on the ground of double jeopardy because he had already been convicted of rebellion based on the same overt acts allegedly constituting the crime of subversion. The trial court denied the motion. After trial, he was convicted and sentenced to reclusion perpetua. He appealed to this Court where he again raised the issue that the charge of subversion placed him in double jeopardy.

It was held that there was no double jeopardy because Liwanag was convicted of rebellion for acts committed before the Anti-Subversion Law took effect while the subversion charge referred to his act of having remained an officer and ranking leader of the CPP and HMB from the time the Anti-Subversion Law took effect on June 20, 1957 up to his capture in 1960. Moreover, the crime of subversion is distinct from rebellion.

In the instant case, the rebellion charge against the petitioners embraced the acts committed by them on or about February 4, 1972 and during the period from August, 1973 to February, 1974. The subversion charge against Buscayno involved his acts committed in 1965, 1967, 1969, 1970 and 1971. The subversion charge against the Sison spouses re-ferred to their acts committed in 1968 and for sometime prior and subsequent thereto. The common denominator of the re-bellion and subversion charges is that the petitioners committed overt acts as alleged communists or leftists. The overt acts in the two charges are different.

Rebellion is an offense that has existed in the Penal Code for a long time. It may be committed by noncommunists with-out collaborating with the agents of an alien power. In contrast, the crime of subversion came into existence when the commu-nists sought to dominate the world in order to establish a new social, economic and political order.

The constitutionality of the Anti-Subversion Law was upheld in *People vs. Ferrer*, L-32613-14, December 27, 1972, 48 SCRA 382 and 56 SCRA 793. Long before the passage of the Anti-Subversion Law membership in illegal associations has been penalized (Art. 146, Revised Penal Code).

A statute which punishes membership in a party or association that advocates the overthrow or destruction of the government by force or violence is justified on the ground of self-preservation (*Dennis vs. U.S.*, 341 U.S. 494, 509; *Scales vs. U.S.*, 367 U.S. 203).

The unavoidable conclusion is that in the present posture of the pending cases against the petitioners their plea of double jeopardy cannot be sustained.

WHEREFORE, the petition is dismissed. The restraining order is lifted. No costs.

SO ORDERED.

Barredo, Fernandez, Guerrero, and De Castro, JJ., concur.

Fernando, concurring and dissenting opinion.

Teehankee, J., dissents in separate opinion.

Makasiar, J., in the result.

Concepcion, Jr., J., no part.

Abad Santos, J., with the same reservation made by J. Melencio-Herrera.

* The habeas corpus case filed in behalf of Benigno S. Aquino, Jr., L-46909, was dismissed on the ground of aban-donment in this Court's resolution of January 8, 1981.

The habeas corpus case filed by Jose Luneta and other defendants in the rebellion case, No. MC-1-92 or SMC-1-1 of Special Military Commission (Case No. MC-24-9) was dismissed in this Court's decision of January 16, 1981 (Luneta vs. Special Military Commission No. 1, L-49473, 102 SCRA 56).

The habeas corpus case filed by Othoniel Jimenez, who was charged with subversion in Military Commission No. 34, was dismissed in this Court's decision of January 15, 1981 (G.R. No. 54577, January 15, 1981, 102 SCRA 39).

The habeas corpus case filed by Saturnino Ocampo and four others against Military Commission No. 25 in connect-ion with the subversion charge against them and Jose Ma. Sison, G.R. No 50155, is still pending.

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concurring and dissenting opinion

FERNANDO, C.J.:

With regret and with due recognition that with the approach taken the conclusion reached by the Court ex-pressed with his usual clarity in the able ponencia of Justice Aquino was inevitable, I find myself unable to agree with my brethren on the question of the scope of our power of review over military tribunals, especially so where the accused are civilians. Moreover, while it is not inaccurate to state that the suspension of the privilege of the writ of habeas corpus carries with it the suspension of the right to bail,[1] I am for a re-examination of such a doctrine. Moreover, even if I did not succeed, it is my submission that there may be a question of unconstitutional application of such a prin-ciple if, notwithstanding the advanced stage of pregnancy of Mrs. Juliet Sison, she is not released on bail.

I am led to concur in the result primarily on the concept of the law of the case, the present petitioners having failed in their previous petitions to transfer their cases to civilian tribunals.[2] I likewise concur with my brethren on the lack of merit in the petition insofar as it contended that there was double jeopardy. Also, while being the lone dissenter in *People v. Ferrer*,[3] where the validity of the Anti-Subversion Act was challenged, I must perforce yield to the prevail-ing doctrine that it is not unconstitutional.

Hence this separate concurring and dissenting opinion.

1. On the question of the power of this Court to review actuations of military tribunals, I adhere to our decision in *Go v. Gen. Olivas*.^[4] That petition for habeas corpus was dismissed on the basic principle that no jurisdictional question was raised by the person detained. Nonetheless, this Court made clear what are the guiding principles to determine its jurisdiction whenever the actuation of a military tribunal is challenged before it. Thus: "1. This Court in *Aquino v. Military Commission No. 2* ruled that there is no constitutional objection to military tribunals conducting trials of civilians for certain specified offenses, among which is kidnapping. That does not preclude the judiciary, of course, from granting in appropriate cases applications for the return of habeas corpus. There is, however, this limitation. The jurisdictional question must be squarely raised. That is a doctrine implicit in the *In re Carr* 1902 decision, the opinion being penned by Justice Willard. The leading case of *Payomo v. Floyd*, a 1922 decision, made it explicit. As set forth by its ponente, Justice Street: 'The next point to be observed upon it that, where the detained person is held in restraint by virtue of a judgment rendered by a military or naval court,

tribunal, or officer, no court entertaining an application for the writ of habeas corpus has authority to review the proceedings of that tribunal, court, or officer in the sense of determining whether the judgment was erroneous. The only question to be considered is whether the court, tribunal, or officer rendering the judgment had jurisdiction to entertain the case and render judgment at all. As was said by the Supreme Court of the United States in a case where the writ of habeas corpus had been sued out to liberate a person detained by virtue of the sentence of a court-martial, the civil courts exercise no supervisory or correcting power by the writ of habeas corpus over the proceedings of a court-martial and no mere errors in their proceedings are open to consideration. "The single inquiry, the test, is jurisdiction. That being established, the habeas corpus must be denied and the petitioner remanded. That wanting, it must be sustained and the petitioner discharged." . . . As otherwise stated the rule is that the proceedings of a military or naval court cannot be reviewed upon habeas corpus when it appears that such tribunal had jurisdiction over the offense charged and that the offender was a person amenable to its authority.' The first Supreme Court decision after the Liberation in 1945, *Cabiling v. Prison Officer*, reiterated such a doctrine. As set forth in the opinion of Chief Justice Moran: 'It is alleged in the petition for habeas corpus filed in his behalf that he is illegally detained, the General Court-Martial having no jurisdiction to try and convict him for the crime charged. . . . [The only] question to be determined is whether or not the General Court-Martial was vested with jurisdiction to try and convict the petitioner for the crime of murder. There seems to be no doubt that it had such jurisdiction. According to Article of War 12 "General Courts-Martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles, . . ." The petitioner, being a staff sergeant of the Philippine Scouts, United States Army, is a person subject to military law, under Article of War 2, and in time of war, the crime of murder committed by a person subject to military law, comes within the jurisdiction of a court-martial, in accordance with Article of War 92.' 2. What minimizes the difficulty facing a detained person, triable by a military tribunal, is this categorical pronouncement by Justice Antonio, speaking for the Court, in the aforesaid *Aquino v. Military Commission* decision: 'It is important to note here that an accused being tried before a military tribunal enjoys the specific constitutional safeguards pertaining to criminal trials. Thus, he is entitled to be heard by himself and counsel, to be informed of the nature and cause of the accusation, to meet the witnesses face to face, to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf, and to be exempt from being a witness against himself. As in trial before civil courts, the presumption of innocence can only be overcome by evidence beyond reasonable doubt of the guilt of the accused. These tribunals, in general, are "bound to observe the fundamental rules of law and principles of justice observed and expounded by the civil judicature." ... There is, therefore, no justification for petitioner's contention that such military tribunals are concerned primarily with the conviction of an accused and that proceedings therein involve the complete destruction and abolition of petitioner's constitutional rights.' Such being the case, the well-settled doctrine announced as early as 1924 by Justice Malcolm in *Conde v. Rivera* and subsequently reiterated, the latest case being *Gumabon v. Director of Prisons* that came out in 1971, to the effect that a denial of a constitutional right may oust the Court of jurisdiction, finds pertinence. In this petition, however, counsel failed to invoke such a principle, relying instead on *Jovito Go* not falling within Proclamation No. 1081. There is plausibility to the argument that under the ruling in *Aquino v. Ponce Enrile*, the offense for which Go was indicted is not included in the crime of insurrection or rebellion which supplied the basis for preventive detention under martial law proclamation. That is not decisive of the controversy before us in view of the fact, as mentioned above, that a military tribunal is vested with jurisdiction where the prosecution is one for kidnapping." [5]

2. I am for the reexamination of the doctrine that the suspension of the privilege of habeas corpus carries with it the suspension of the right to bail. That was my view as one of the counsel in *Hernandez v. Montesa*, [6] heard and thereafter decided in one opinion with *Nava v. Gatmaitan*. As set forth in the dissenting opinion of Justice Teehankee, the majority was of that view but unfortunately there was one vote short of the necessary six

affirmative votes at that time. It is quite under-standable if I find nothing objectionable in his opinion when he cited extensively from Tañada and Fernando on the Constitution of the Philippines Annotated.[7]

3. A few additional observations. The petition made mention of the efforts of counsel to have the President transfer the cases to the civil courts. The success of such endeavor would be for me a cause for gratification. It would mean that the lifting of martial law would likewise put an end to the jurisdiction of military tribunals over civilians, necessitated by the past period of emergency. At any rate, to the extent that the evidence before respondent Military Commission found in the records was offered with due regard to the constitutional rights of an accused, it could still be relied upon by the court to which the cases may be transferred. In the event that such efforts would not be attended to with success, it would be desirable, to my way of thinking, if there be only one military commission to continue with the trial of petitioners. There is this last point. The opinion of the United States Supreme Court in *Dennis v. United States*[8] and *Scales v. United States*[9] were cited in the ponencia. The later case, as made clear in the opinion of Justice Harlan, while upholding the applicability of the Smith Act likewise emphasized that such statute requires proof of a specific intent to bring about the violent overthrow of the government and proof of "active" as distinguished from mere "nominal" or "passive," membership. Nonetheless, the more liberal view which for me expresses the current state of American constitutional law is that set forth in *Brandenburg v. Ohio*[10] decided in 1969 at the end of the last term of the Warren Court. To cite from the opinion of the United States Supreme Court: "These later decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." [11]

[1] *Lansang v. Garcia*, L-33964, December 11, 1971, 42 SCRA 448.

[2] Cf. *Buscayno v. Enrile*, L-47185, January 15, 1981, 102 SCRA 7 and *Jose Ma. Sison, Juliet Sison, Mila Buscayno, et al. v. Enrile*, L-49579, January 15, 1981, 102 SCRA 33.

[3] L-32613, December 27, 1972, 48 SCRA 382.

[4] L-44989, November 29, 1976, 74 SCRA 230.

[5] *Ibid*, 234-236.

[6] 90 Phil. 172 (1971).

[7] Fourth edition, 531-532 (1953).

[8] 341 US 494 (1951).

[9] 367 US 203 (1961)

[10] 395 US 444.

[11] *Ibid*, 447. Cf. Strong, Fifty Years of "Clear and Present Danger." *Supreme Court Review* 41 (1969).

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Dissenting opinion

TEEHANKEE, J.:

The principal questions presented in the case at bar as-assert (1) the constitutional right of civilians like petitioners to the judicial process of civilian trials by the regular civil courts composed of judges trained in the law whose objectivity and independence are protected by tenure and undiminished salary and are nurtured by the judicial tradition as against the executive process of trial by military tribunals composed of military officers, specially so with the lifting of martial law on January 17, 1981 through the President's Proclamation No. 2045, and (2) petitioners' constitutional right to bail unless it could be shown that evidence of guilt for the capital offense of subversion for which they are charged were strong.

I dissent from the majority decision's dismissal of the petition and denial of these constitutional rights invoked by them.

I. On the first question of the right of civilians to trial by judicial process, I dissent on the grounds stated in my separate opinions in *Aquino vs. Military Commission No. 2*[1] and in the latest cases this year of *Buscayno vs. Enrile*[2], *Sison vs. Enrile*[3] and *Luneta vs. Special Military Commission No. 1*[4].

These cases were all decided before the President's issuance of Proclamation No. 2045 on January 17, 1981 revoking his previous proclamations of martial law (Nos. 1081 and 1104) as well as General Order No. 8, and directing that "the military tribunals created pursuant thereto are hereby dissolved upon final determination of cases pending therein which may not be transferred to the civil courts without irreparable prejudice to the state in view of the rules on double jeopardy, or other circumstances which render further prosecution of the cases difficult, if not impossible."

In *Sison* particularly, the Court in dismissing the petition, unanimously noted that "(T)he President of the Philippines has announced that the military tribunals are being phased out. It is reported that the Ministry of Justice is now taking steps to transfer cases pending before the military tribunals to the civil courts. Hence, the issues raised by the petitioners have become moot and academic."

With the official lifting of martial law under Proclamation No. 2045 and the revocation thereunder of General Order No. 8 creating military tribunals, and pursuant to the Court's above-quoted pronouncement in *Sison* on the phaseout of military tribunals, there is no longer any justification for continuing to subject petitioners-civilians to trial by military commissions in derogation of the judicial power vested exclusively in the civil courts.

As stressed in my separate opinion in *Aquino*, civilians like petitioners placed on trial for offenses under general law are entitled to trial by judicial process, not by executive or military process. Judicial power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law. Military commissions or tribunals are not courts and do not form part of the judicial system. Since we are not enemy-occupied territory nor are we under a military government, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning.

As was held in a leading U.S. Supreme Court case[5], "the assertion of military authority over civilians [discharged servicemen] cannot rest on the President's power as Commander-in-Chief or on any theory of martial law." The late Justice Hugo Black speaking for that Court aptly pointed out that "the presiding officer at a court martial [or military commission] is not a judge whose objectivity and independence are protected by tenure and undiminished salary and nurtured by the judicial tradition, but is a military law officer. Substantially different rules of evidence and procedure apply in military trials. Apart from these differences, the suggestion of the

possibility of influence on the actions of the court-martial by the officer who convenes it, selects its members and the counsel on both sides, and who usually has direct command authority over its members is a pervasive one in military law, despite strenuous efforts to eliminate the danger," and "(A) Court-Martial is not yet an independent instrument of justice but remains to a significant degree a specialized part of the over-all mechanism by which military discipline is pre-served," and ex-servicemen should be given "the benefits of a civilian court trial when they are actually civilians Free countries of the world have tried to restrict military tribunals to the narrowest jurisdiction deemed absolutely essential to maintaining discipline among troops in active service."

Finally, it should be noted that there has been no showing by respondents that the cases against petitioners fall within the only exception provided in Proclamation No. 2045[6] wherein the military tribunals which are therein dissolved may make a "final determination," to wit, "cases pending therein which may not be transferred to the civil courts without irreparable prejudice to the State in view of rules on double jeopardy, or other circumstances which render further prosecution of the cases difficult, if not impossible." Certainly, neither the respondents nor the State claim, much less have shown, that the transfer of petitioners' cases to the civil courts would result in "irreparable prejudice" to the State because of double jeopardy or that such transfer to the civil courts would render further prosecution "difficult, if not impossible" in the face of petitioners' assertion and insistence that the military tribunals have no jurisdiction over them as civilians.

II. On the second question on the right of petitioners to bail, absent a showing of strong evidence of guilt of the capital offense of subversion, notwithstanding the saving clause in Proclamation No. 2045 maintaining the suspension of the privilege of the writ of habeas corpus as to them as persons detained for rebellion and subversion, I reiterate my adherence to the majority holding in the leading 1951 cases of *Nava vs. Gatmaitan* and *Hernandez vs. Montesa*[7] (although it failed one vote short of the required majority of six affirmative votes at the time) as expounded by then Chief Justice Ricardo Paras and Associate Justice (later Chief Justice) Cesar Bengzon and Associate Justices Pedro Tuason, Alex Reyes and Fernando Jugo that after formal indictment in court by the filing against them of an information charging rebellion with multiple murder, etc., accused persons covered by the proclamation of suspension of the privilege of the writ of habeas corpus are entitled to the right to bail. As stressed by then Chief Justice Paras, "(T)he right to bail, along with the right of an accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf (Article III, Section 1, Paragraph 17, of the Constitution), tends to aid the accused to prove his innocence and obtain acquittal. If it be contended that the suspension of the privilege of the writ of habeas corpus includes the suspension of the distinct right to bail or to be provisionally at liberty, it would a fortiori imply the suspension of all his other rights (even the rights to be tried by a court) that may win for him ultimate acquittal and, hence, absolute freedom. The latter result is not insisted upon for being patently untenable."

I cannot improve on the presentation of the rationale of the failed majority in the cited right to bail cases as made in the oft-cited work of Tañada and Fernando, and herewith reproduce the same:

"In *Nava v. Gatmaitan* and *Hernandez v. Montesa*, the question presented before the Supreme Court was the effect on the right to bail of the suspension of the writ of habeas corpus. For lack of one vital vote, to make a majority of six as required by the Judiciary Act, the Supreme Court missed an opportunity to speak in unmistakable language that constitutional rights mean what they say and that the Constitution is supreme, emergency to the contrary notwithstanding. Respondent judges in the above two petitions ruled that the petitioners were included among those coming within the terms of the suspension of the privilege of the writ of habeas corpus and were for that reason not entitled to their constitutional right to bail. Upon the matter being taken before the Supreme Court, five of the nine Justices who voted on the question were of the opinion that petitioners under

the Constitution have the right to bail unless it could be shown that evidence of guilt for the capital offense of which they were charged were strong. In thus arriving at that conclusion, the above five justices merely applied literally the terms of the controlling constitutional provision.

"As Chief Justice Paras expressed it:

'* * * The privilege of the writ of habeas corpus and the right to bail guaranteed under the Bill of Rights are separate and co-equal. If the intention of the framers of the Constitution was that the suspension of the privilege of the writ of habeas corpus carries or implies the suspension of the right to bail, they would have very easily provided that all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong and except when the privilege of the writ of habeas corpus is suspended. As stated in the case of *Ex Parte Milligan*, 4 Wall. 2, 18 L. ed. 297, the Constitution limited the suspension to only one great right, leaving the rest to remain forever inviolable.'

"Justice Tuason had no doubts on the matter either:

'To the plea that the security of the State would be jeopardized by the release of the defendants on bail, the answer is that the existence of danger is never a justification for courts to tamper with the fundamental rights expressly granted by the Constitution. These rights are immutable, inflexible, yielding to no pressure of convenience, expediency or the so-called 'judicial statesmanship.' The Legislature itself cannot infringe them, and no court conscious of its responsibilities and limitations would do so. If the Bill of Rights are incompatible with stable government and a menace to the Nation, let the Constitution be amended, or abolished. It is trite to say that, while the Constitution stands, the courts of justice as the repository of civil liberty are bound to protect and maintain undiluted individual rights.'

"From Justice Bengzon. . .

there is a cogent and forceful presentation of the argument that respect for constitutional rights would aid in the fight against Communism in the Philippines.

'And in my opinion, one of the surest means to ease the uprising is a sincere demonstration of this Government's adherence to the principles of the Constitution together with an impartial application thereof to all citizens, whether dissidents or not. Let the rebels have no reason to apprehend that their comrades now under custody are being railroaded into Muntinlupa, without benefit of those fundamental privileges which the experience of the ages has deemed essential for the protection of all persons accused of crime before the tribunal of justice. Give them the assurance that the judiciary, ever mindful of its sacred mission, will not, thru faulty or misplaced devotion, uphold any doubtful claims of Governmental power in diminution of individual rights, but will always cling to the principles uttered long ago by Chief Justice Marshall that when in doubt as to the construction of the Constitution, 'the Courts will favor personal liberty.' (*Ex parte Burford*, 3 Cranch, & U.S., Law Ed. Book 2, at p. 495)."[8]

III. A final word on the statements in the main opinion[9] that would deny to this Supreme Court the right to "review the rulings and proceedings of the military commission" or at best limit such review "to decisions of the Court of Military Appeals[10] in cases appealed to it from the military commission." It must first be noted that these statements do not carry the affirmance of a majority of the Court that would unsettle or overthrow this Court's consistent exercise of its judicial power and jurisdiction through the prerogative writs of certiorari and prohibition or habeas corpus over cases, including military commissions (in whatever stage of the proceedings), where a violation or denial of constitutional rights is asserted by the aggrieved party, although not always with successful results. In this very case, the Court did again exercise, with the required concurrence of at least eight (8) members, its jurisdiction over proceedings in the military commissions per its Resolution of October 22, 1981

through the issuance of a temporary restraining order enjoining respondent military commissions "from proceeding with the trial of petitioners until otherwise ordered by the Court."

[1] 63 SCRA 546 (May 9, 1975).

[2] L-47185 (January 15, 1981), 102 SCRA 7, 21.

[3] L-49579 (January 15, 1981), 102 SCRA 33, 38.

[4] 102 SCRA 56, 68 (January 16, 1981).

[5] *Toth vs. Quarles*, 350 U.S. 5 (1953), notes in brackets supplied.

[6] Quoted on pages 10-11, main opinion.

[7] Jointly decided with *Angeles vs. Abaya* and reported in 90 Phil. 172.

[8] Op. cited, 4th Ed., pages 531-532.

[9] At pages 11-12.

[10] The writer is not even aware that such Court of Military Appeals has been actually organized and is actually functioning.

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